

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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ROY W. STANLEY	)	DOCKET NO.: PT-1998-5
	)	
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE OF	)	FINDINGS OF FACT,
THE STATE OF MONTANA	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on August 5, 1999, in the City of Polson, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

Don McBurney (McBurney), agent for the taxpayer, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisers Jackie Ladner (Ladner), Larry Richards (Richards) and Regional Manager Scott Williams (Williams), presented testimony in opposition to the appeal. Testimony was presented and exhibits were received.

The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes

as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property subject of this appeal is described as follows:

Lots 7 & 7A, 8 & 8A, Block 12, Table Bay Addition, City of Lakeside, County of Lake, State of Montana and improvements located thereon. (Assessor Code - 13820).

3. The appeal on the market value of the land was withdrawn before the county tax appeal board. The market value of the improvements is the subject of the appeal.

4. For the 1998 tax year, the DOR appraised the subject improvements at a value of \$516,900.

5. The taxpayer appealed to the Lake County Tax Appeal Board on May 26, 1998 requesting a reduction in the improvement value based on the removal of the economic condition factor (ECF) of 117%.

6. In its August 7, 1998 decision, the county board upheld the Department of Revenue's value, stating:

*No AB-26 filed 1996, 1997. No property tax appeal form filed 1996, 1997. Without evidence of market value to the contrary cannot dispute DOR findings of value.*

7. The taxpayer through his agent, then appealed that decision to this Board on August 19, 1998, stating:

*CTAB's logic is faulty, e.g., if a house is mismeasured (sic) the taxpayer need not bring an appraisal to his hearing showing his assessment to be in error as to the bottom-line value estimate. Here, DOR's ECF methodology is wrong.*

8. Taxpayer's exhibits #1 through #6 presented at the county hearing are a part of the record before this Board and were not resubmitted.

9. McBurney is a licensed independent fee appraiser.

#### TAXPAYER'S CONTENTIONS

McBurney stated that "the numbers and issue involved in this appeal boils down to the removal of the ECF from the assessment on his improvement."

CTAB exhibit #1 is a decision of STAB, *Grandview Plaza v. DOR, PT-1994-50 & PT-1995-1R*. The DOR was directed to remove the ECF.

CTAB exhibits #2 - #5 are compilations of properties subject to the application of an ECF of 117%. The properties on all four exhibits are the same but the information on each was sorted by such physical characteristics as year built, building size, market value and quality grade. These properties are residential and are located in Lake County. McBurney asserted that the DOR's application of the 117% ECF is applied in a broad method as indicated by the application to properties in the Swan

Valley, Flathead Lake and Lake Mary Ronan areas. This ECF was applied not only to properties with lake frontage but also to properties with lake influence.

Taxpayer exhibit #1 is a page copied from The Appraisal of Real Estate, 11<sup>th</sup> Edition. Summarized, this exhibit illustrates the following:

**Procedure**

After inspecting the neighborhood, the site, and the improvements and gathering all relevant data, an appraiser follows a series of steps to derive a value indication by the cost approach. The appraiser will...

3. Estimate an appropriate entrepreneurial incentive (profit) from analysis of the market.(emphasis supplied)

McBurney's opinion is that the DOR's ECF is synonymous with entrepreneurial incentive. McBurney does not dispute the appropriate use of an ECF, but rather the DOR's method of application with total disregard to the subject property's uniqueness. This is made apparent from CTAB exhibits #2 - #5. The DOR's "blanket" application of the 117% ECF is inappropriate.

Exhibit #2 is a portion of an appraisal performed by McBurney and is presented for illustrative purposes only as to the use of entrepreneurial profit.

Exhibit #3 is a copy of a map depicting a portion of the State of Montana. The emphasis of this exhibit is to illustrate that Highway 28, from the towns of Elmo to Niarada travels through Lake, Flathead and Sanders Counties. The DOR does not cross county lines when analyzing sales data and establishing an ECF.

Identical properties within a very short distance of each other in a different county would have a different value indication based on the county's determination of the ECF, even though each property is affected by the same economic conditions.

#### DOR'S CONTENTIONS

DOR's exhibits A, B & C are the subject property record cards, descriptive information used by the DOR in establishing the appropriate quality grades of construction for the three residential structures and the Condition, Desirability and Utility (CDU) determinations for each structure. Summarized, these exhibits illustrate the following:

Exhibit	A	C	D
Year Built	1996	1970	1970
Effective Age	1996	1970	1970
Physical Condition	Good (5)	Average (4)	Average (4)
Quality Grade	Very Good (7+)	Low (3-)	Poor (2)
Condition/ Desirability/ Utility (CDU)	Very Good	Average	Average
1 <sup>st</sup> Floor Area	4,212 SF	672 SF	644 SF
2 <sup>nd</sup> Floor Area	576 SF		
Other Building & Yard Improvements	RS1		
	AL1		
	RT1		
	PA2		
Replacement Cost New (RCN)	\$412,730	\$23,630	\$18,470
Percent Good	99%	75%	75%
<b>Economic Condition Factor (ECF)</b>	<b>117%</b>	<b>117%</b>	<b>117%</b>
Replacement Cost New Less Depreciation (RCNLD)	\$479,960	\$20,730	\$16,210

Grade 7 - Very Good Quality Residences: Residences are of high quality construction, built with high quality materials, workmanship and custom craftsmanship. Exterior ornamentation show refinements with good quality fenestration throughout. Interiors are well finished with good quality wall coverings or wood paneling and hardwood. These homes are usually individually designed. (emphasis supplied)

Grade 3 - Low Cost Quality Residences: Grade 3 residences are of low cost

construction built with low cost materials and average workmanship but will meet most minimum building code requirements. Exterior and interior finishes are plain, minimum fenestration with inexpensive sash and little or no trim. These homes are built for function, not appearance. (emphasis supplied)

Grade 2 - Poor Quality Residences: Residences are of substandard construction, built with low cost materials and below average workmanship. These residential structures will not meet most minimum building code requirements. Exterior and interior finishes are plain with little or no trim. These houses are built for function, with little attention to design. (emphasis supplied)

**Condition**

**Desirability (Location)**

**Utility**

Excellent	= 10	Fair	= 6
Very Good	= 9	Poor	= 5
Good	= 8	Very Poor	= 3
Average	= 7	Unsound	= 1

	<u>Exhibit A</u>	<u>Exhibit C</u>	<u>Exhibit D</u>
Condition	8 x 1 = 8	7 x 1 = 7	7 x 1 = 7
Desirability	10 x 2 = 20	8 x 1 = 16	8 x 1 = 16
Utility	9 x 1 = 9	7 x 1 = 7	7 x 1 = 7
	37	30	30
	37/4 = <b>9.25</b>	30/4 = <b>7.5</b>	30/4 = <b>7.5</b>
	<b>Very Good</b>	<b>Average</b>	<b>Average</b>

DOR exhibit E is the "Montana Comparable Sales" that illustrates the properties selected by the Computer Assisted Mass Appraisal System (CAMAS) and used to establish a value indication by means of the sales comparison approach. In pertinent part this exhibit illustrates the following:

<u>Dwelling Description</u>	<u>Subject</u>	<u>Comp #1</u>	<u>Comp #2</u>	<u>Comp #3</u>
Year Built	1996	1990	1920	1976
Total Living Area	4,788 SF	2,950 SF	2,980 SF	2,657 SF
Sale Date		5/94	5/94	1/94
Sale Price		\$396,000	\$ 84,000	\$257,000
MRA Estimate	\$742,144	\$422,617	\$ 68,299	\$260,512
Adjusted Sale		\$715,527	\$757,845	\$738,632
Comparability		757	879	906
Weighted Estimate	\$724,489			
Market Value	\$734,100			
Field Control Code	1			
<b>Indicator</b>		<b>**NC**</b>	<b>**NC**</b>	<b>**NC**</b>

Richards testified that the overall value indication was determined from the cost approach to value because the properties

illustrated on exhibit E are not considered comparable to the subject property as noted by the indicator "NC" (non-comparable).

Ladner testified that the issue is the value of the subject property and the DOR is instructed to arrive at market value. DOR Exhibit F is a description of the cost approach to value and further an explanation of the use of the ECF. In pertinent part this exhibit states the following:

The final step in the *cost approach* is to assure that the estimated values are consistent with the market approach to value. We use an economic condition factor or ECF, to reflect the demand side of the market. This ECF is determined by comparing sales prices in an area with their overall cost values. The percentage difference between the two is the ECF, and is applied to the replacement cost new less depreciation of all properties in the area. (emphasis added)

#### Economic Condition Factor (ECF)

IAAO terms this market adjustment factor, "The final step in the cost approach is ensuring the estimated values are consistent with the market. This is particularly important because the cost approach separately estimates land and building values and uses replacement costs, which reflects only the supply side of the market." "Market adjustment factors are often required to adjust values obtained from the cost approach to the market." Property Appraisal and Assessment Administration, IAAO Pg. 360 & 311. (emphasis added)

#### Economic Condition Factor

The Department of Revenue developed cost tables by using Marshall-Swift, Means and Boeckh's Valuation manuals, trended by actual regional construction costs to January 1, 1996. This cost approach is then compared to the sales base of the given neighborhood group or county (depending upon homogeneity and sales numbers) and the percentage difference between the two is termed the ECF. The ECF is then applied across the board to all properties in the group. This creates equity, when the cost approach is required to value a parcel in place of the market approach, when comparable sales do not exist(emphasis added)

The "model area" to which the ECF of 117% has been applied is defined as neighborhood 300. Neighborhood 300 consists of properties that are impacted by the proximity to Swan Lake,

Flathead Lake and Lake Mary Ronan. DOR Exhibit G is a three page document that contains the information used to calculate the 117% ECF for neighborhood 300. Based on the information illustrated on the exhibit and the testimony of Ladner and Williams, the ECF was determined as follows:

$$\text{ECF} = 1 + \frac{\text{Median Ratio} - 1}{1 - \frac{\text{Total Land}}{\text{Total Cost}}}$$

$$\text{ECF} = 1 + \frac{1.065 - 1}{1 - \frac{\$344,496,435}{\$567,617,105}}$$

$$\text{ECF} = 1.17$$

Ladner asserted that nothing was presented to indicate that the DOR's market value determination for the subject property is incorrect.

#### BOARD'S DISCUSSION

McBurney has asked this Board to determine a value of the subject property based on the DOR cost approach to value with the removal of the ECF.

The subject property consists of three structures and various site improvements. The DOR's value for the main structure represents approximately 92% of the total improvement value. This main structure was built in 1996, which is the same year the DOR was analyzing sales and construction cost data for the current



reappraisal cycle. If the reasonableness of the DOR's ECF determination is at issue before this Board, the actual construction costs could be considered as an indication of value as a test. McBurney, as an active independent fee appraiser would have access to sales information, which is another method that could be employed to test the reasonableness of the DOR's ECF. McBurney did not present the Board with evidence from actual construction costs or market sales data to suggest that the DOR's application of a 117% ECF is not appropriate

In Albright v. DOR, 281 Mont. 196, the Supreme Court addressed the DOR application of a ECF.

...The taxpayers argue that the ECFs, which are designed to narrow the inconsistency between the cost approach and market data approach, are no different than the "blanket multipliers," and stratified sales assessment ratio studies (ratio studies), which we condemned in Department of Revenue v. Barron (1990), 245 Mont. 100, 799 P.2d 533, and Department of Revenue v. Sheehy (1993), 262 Mont. 104, 862 P.2d 1181. We disagree. The ratio studies at issue there were the statutorily mandated method of appraisal and the issue was whether that method was constitutional. These studies produced ratios utilizing historical data (actual sales prices and existing appraised values) without any actual new appraisal. Barron, 799 P.2d at 534. We concluded that the non-uniform application of the ratios unconstitutionally required certain taxpayers to bear a disproportionate share of the tax burden. Barron, 799 P.2d at 540. The use of ECFs is a recognized and accepted practice by fee appraisers. The ECFs used here are an integral component of CAMAS; are applied uniformly in the localized area; and appropriately take into consideration and adjust cost approach appraisals on individual parcels of property for current local economic and market conditions. Absent the integration of such economic and market influences, the results of the new appraisal produced by the cost approach would be skewed. We therefore conclude that the Department's market-based method--which utilizes a combination of approaches--does not violate Article VIII, Section 3, of the Montana Constitution. (pertinent part)

McBurney referenced a STAB decision, Grandview Plaza v. DOR, PT-1994-50 & PT-1995-1R, 1996, in which this Board did order the removal of the ECF. The property in that appeal was a commercial multi-family housing complex and thus would be affected

by an entirely different accumulation of market factors. The property before this Board, even though it is subject to taxation through 15-6-134, Class four property, MCA., is not similar to Grandview Plaza.

The Board agrees with McBurney that not all property is affected in the market in the same manner. The subject property, valued at \$805,810 and located on Flathead Lake may not have the same number of potential buyers or market conditions as a property located on Flathead lake with a market value of \$250,000. They may, in fact, have different economic conditions or ECF's that would affect their respective values. The Board was presented nothing to suggest that the DOR's application of an ECF of 117% is not appropriate for the subject.

The Board finds that there was insufficient evidence presented by the taxpayer's agent to support a market value indication of something less than what the Department of Revenue has established.

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#### CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100%

of its market value except as otherwise provided.

3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

4. Albright v. State of Montana, 281 Mont. 196.

5. The taxpayer and taxpayer's agent failed to provide sufficient evidence to warrant the removal of the 117% ECF.

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#### ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the Assessor of that county at the 1998 tax year value of \$516,900 for the improvements as determined by the Department of Revenue. The appeal of the

taxpayer is therefore denied and the decision of the Lake County  
Tax Appeal Board is affirmed.

Dated this 18th day of August, 1999.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

( S E A L )

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JAN BROWN, Member

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JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in  
accordance with Section 15-2-303(2), MCA. Judicial review may  
be obtained by filing a petition in district court within 60  
days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of August, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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